

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Tremaine Wiggins,)	C/A No. 3:04-00547
)	
Movant,)	
vs.)	<u>ORDER</u>
)	
United States of America,)	
)	
Respondent.)	
)	

Movant, Tremaine Wiggins, appearing *pro se*, is an inmate at the Federal Correctional Institution in Montgomery, Alabama.¹ Movant filed a motion with the court on November 1, 2006 for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 (2006). (Mot. to Correct (Entry 576).) On November 8, 2006, the court ordered the United States Attorney to respond to Movant's motion. (Order (Entry 577).) In a November 14, 2006 response, the United States Attorney supported Movant's motion to revise his sentence. (Resp. to Mot. to Correct (Entry 578).)

Movant alleges that his offense level was calculated inaccurately because the 2004 edition of the Sentencing Guidelines was used instead of the 2003 edition. He contends that the 2003 edition of the Sentencing Guidelines should have been applied to determine his sentence. The court agrees. The 2003 edition was in effect when the offenses to which Movant pleaded took place. The 2003 edition is less punitive than the 2004 edition of the Sentencing Guidelines. Therefore, the 2003 edition should have been used in calculating Movant's offense level. *See United States v. Blackburn*,

¹ Movant is in federal custody serving a sentence for drug trafficking convictions. Pursuant to a plea agreement, Movant pleaded guilty to counts of a grand jury indictment charging him with distribution of a quantity of marijuana and crack cocaine in his possession.

940 F.2d 107, 109 (4th Cir. 1991).

Using the 2004 edition of the Sentencing Guidelines, Movant was determined to have a base offense level of 34. His total offense level was 30 after the application of adjustments, including a downward adjustment for his mitigating role in the offenses. *See* U.S. SENTENCING GUIDELINES MANUAL § 2D1.1(a)(3) (2004). Movant's final guideline range was 108 to 135 months imprisonment. Movant was sentenced to one hundred and eight months incarceration.

Under the 2003 edition of the Sentencing Guidelines, Movant's base offense level should be no more than 30 as he received a mitigating role adjustment for the offenses. *See* U.S. SENTENCING GUIDELINES MANUAL §§ 2D1.1(a)(3), 3B1.2 (2003). After application of the three-level reduction provided to Movant for acceptance of responsibility and other adjustments, his total offense level should be 26.² The proper guideline range should be 70 to 87 months imprisonment.

Movant's § 2255 motion (Entry 576) is **granted**. The court directs the United States Probation Office to revise the presentence report to reflect the correct guideline calculation using the 2003 edition of the Sentencing Guidelines Manual. A sentencing hearing will be scheduled.

s/ Margaret B. Seymour
United States District Judge

December 6, 2006

Columbia, South Carolina

² There was an error in the United States Attorney's response asserting that Movant's correct total offense level is 27. (Resp. to Mot. to Correct 1.)